HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal Nos. 618, 619 & 620 of 2007

Writ Appeal No.618 of 2007

Between:

Col.D.S. Raju Polytechnic
Rep. By its Secretary and Correspondent,
Poduru, West Godavari District

... Appellant

And

M. Baby Sarojini & others

... Respondents

Counsel for the appellant : Shri K. Chidambaram

Counsel for respondent No.1: Shri M. Pandu Ranga Rao

Writ Appeal No. 619 of 2007

Between:

Col.D.S. Raju Polytechnic
Rep. By its Secretary and Correspondent,
Poduru, West Godavari District

... Appellant

And

K. Vijaya Gopal & others

... Respondents

Counsel for the appellant : Shri K. Chidambaram

Counsel for respondent No.1: Shri M. Pandu Ranga Rao

Writ Appeal No. 620 of 2007

Between:

Col.D.S. Raju Polytechnic
Rep. By its Secretary and Correspondent,
Poduru, West Godavari District

... Appellant

And

V.B.S.S. Rama Krishnam Raju & others

... Respondents

Counsel for the appellant : Shri K. Chidambaram

Counsel for respondent No.1: Shri M. Pandu Ranga Rao

August 09, 2007

:: COMMON JUDGMENT ::

Per G.S. Singhvi, CJ

These appeals are directed against common order dated 27.07.2007 passed by the learned Single Judge in W.P.M.P. Nos.10345, 10346 and 10349 of 2007 in Writ Petition Nos. 8053, 8052 and 8055 of 2007 respectively, whereby he suspended the operation of order dated 12.04.2007 passed by the management of Col. D.S. Raju Polytechnic, Poduru, West Godavari District (for short, 'the

college').

M. Baby Sarojini (respondent No.1 in Writ Appeal No.618 of 2007) joined the service of the college as Demonstrator in Civil Engineering Department in December, 1981. She was promoted as Assistant Lecturer in December, 1982 and was designated as Associate Lecturer with effect from 1.11.1992. After about five years, she was promoted as Lecturer. By an order dated 12.04.2007, the management of the college terminated the service of respondent No.1. She challenged the same in Writ Petition No.8053 of 2007. Likewise, the services of K. Vijaya Gopal (respondent No.1 in Writ Appeal No.619 of 2007) and V.B.S.S. Rama Krishnam Raju (respondent No.1 in Writ Appeal No.620 of 2007) were also terminated by the management of the college vide order dated 12.4.2007. They filed Writ Petition Nos.8052 and 8055 of 2007.

By a common order dated 19.4.2007, the learned Single Judge disposed of the above noted three writ petitions along with other petitions filed by similarly situated teachers. He relegated the petitioners to the alternative remedy of appeal and simultaneously stayed the termination of their services for a period of seven days.

The writ petitioners and management of the college appealed against the order of the learned Single Judge. Vide judgment dated 30.04.2007 rendered in Writ Appeal Nos. 359 of 2007 and batch, the Division Bench set aside the order of the learned Single Judge and remanded the matters for fresh adjudication of the petitioners' challenge to the termination of their services.

By the order under challenge, the learned Single Judge, after

considering the rival pleadings and taking note of the fact that the writ petitioners have completed more than 10 to 20 years of service, suspended the operation of order dated 12.04.2007. For the sake of reference, the order of the learned Single Judge is reproduced below:

> "Heard both sides.
>
> These WPMPs have been filed seeking to suspend the impugned orders retrenching the petitioners and consequently direct the management to continue them in service.
>
> Insofar as interim prayer is concerned, the learned counsel for petitioners states that while disposing of the writ petitions on 19-4-2007, this court suspended the impugned orders dated 12-4-2007 during the pendency of the statutory appeals.
>
> Whereas, the learned counsel for respondent-management strenuously contended that since the petitioners also filed writ appeals against the orders passed by the learned Single Judge, all the appeals were heard and disposed of together. Under those circumstances, the interim stay granted by the learned Single Judge was not disturbed.
>
> It is also stated by the learned counsel for petitioners that in view of the orders passed by the learned Single Judge, all the appeals were heard and disposed of together. Under those circumstances, the interim stay granted by the learned Single Judge was not disturbed.
>
> It is also stated by the learned counsel for the petitioners that in view of the orders passed by the learned Single Judge dated 19-4-2007, the petitioners have filed statutory appeals before the competent authority and the appeals in fact were disposed of directing the respondents to take back the petitioners into service. However, this fact is disputed by the respondents.
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> Whereas, the learned counsel for respondents states that salary in lieu of three months notice was paid and the services of the petitioners were dispensed with in view of the financial stringency of the respondent management consequent on closure of Civil Engineering Department.
>
> The learned counsel for petitioners states that while according approval, the AICTE has made it clear that the services of staff of Civil Engineering Department has to be utilized for teaching subjects like Engineering, Drawing, Hydraulics, Mechanics of Solids etc. in other engineering disciplines. Therefore, the respondents, instead of accommodating the petitioners in other engineering disciplines, have

retrenched them under the guise of exercise of powers under Section 83 of the Act, which is not correct. Moreover, it is also submitted by the learned counsel for petitioners that the petitioners have put in more than 25 years of service in their respective posts and that no notice of any kind was issued to the petitioners before their services were retrenched.

In the present case, though the management seems to have obtained prior approval before retrenchment of petitioners under Section 83 of the Act, admittedly petitioners were not put on any notice as to why their services should not be terminated since they cannot be accommodated in other disciplines as advised by the AICTE.

Be that as it may, petitioners have challenged retrenchment of their services on the grounds of arbitrary exercise of power, infringement of their right to livelihood and violation of principles of natural justice. While disposing of the writ appeals, the Division Bench of this court observed that prima facie the management of the college could not have packed them off without complying with the rule of audi alterem partem.

In view of the above, I am of the opinion that the balance of convenience is in favour of petitioners. Therefore, there shall be suspension of the impugned orders and the respondent-management is directed to permit the petitioners to join duty forthwith in their respective posts."

Shri K. Chidambaram, learned counsel for the appellant made strenuous efforts to convince us that the action taken by the management of the college was necessitated due to financial stringency and the learned Single Judge committed an error by staying the termination of the services of the writ petitioners, but we have not felt impressed. Rather, we are inclined to agree with the learned Single Judge that the termination of the services of the writ petitioners is vitiated due to violation of the rules of natural justice apart from being arbitrary.

We are further of the view that the learned Single Judge did not commit any error in exercising his discretion to entertain and accept the prayer made by the writ petitioners on the premise that the action of

the management of the college had resulted in depriving them of their livelihood.

In the result, the appeals are dismissed.

Before parting with the case, we deem it proper to take cognizance of the statement made by Shri Chidambaram that he would advise the management of the college to withdraw order dated 12.04.2007 and take appropriate action in accordance with law. If this is so, it will be open to the management to inform the Court of the revised decision and make a request for disposal of the writ petitions in terms of such decision.

As a sequel to dismissal of the appeal, W.A.M.P.No.1249, 1250 and 1251 of 2007 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

August 09, 2007

C.V. NAGARJUNA REDDY, J

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